



Chemutai (Suing as the legal representative of the Estate of Prisca Chepkonga) v Chemwoiyo & 2 others (Environment & Land Case 3 of 2023) [2023] KEELC 22601 (KLR) (18 October 2023) (Ruling)

Neutral citation: [2023] KEELC 22601 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KABARNET
ENVIRONMENT & LAND CASE 3 OF 2023
L WAIHAKA, J
OCTOBER 18, 2023**

BETWEEN

**LYNN CHEMUTAI PLAINTIFF
SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF PRISCA
CHEPKONGA**

AND

**SYMON KIPKOECH CHEMWOIYO 1ST DEFENDANT
ELISHA CHEBII CHESINYA 2ND DEFENDANT
EZEKIEL CHEMOIYWO 3RD DEFENDANT**

RULING

1. The notice of motion dated 23rd June 2023 filed under Sections 1A, 3A, 3B of the [Civil Procedure Act](#) and Order 24 Rule 7 of the [Civil Procedure Rules](#) seeks the following orders:
 - a. That the instant suit having abated as against the 2nd defendant be revived for hearing on merit.
 - b. That the honourable court be pleased to extend time and order substitution of the deceased 2nd defendant with his legal representatives namely Susan Kimosop Chesinya, Amelia Jeptoo Chesinya and Ruto Chesinya out of time.
 - c. That the cost of this application be in the cause.
2. The application is premised on the grounds on its face and is supported by the affidavit of Lynn Chemutai, sworn on 23rd June 2023. She deposes that on 16th November, 2020 she was informed that the 2nd defendant had died on 17th June 2020; that the beneficiaries had failed to take out letters of administration and substitute the deceased with a representative even though they were aware of



this suit; that the death certificate was forwarded to her in the 6th of July 2022 and she immediately filed citation proceedings against the estate of the 2nd defendant. This prompted the beneficiaries of the estate to apply for letters of administration intestate and they were issued with Limited Grant of Letters Ad Litem on 27th February 2023 for the purpose of defending this suit. She urges the court to revive the suit and extend time within which to substitute the deceased 2nd defendant with his legal representatives, Susan Kimosop Chesinya, Amelia Jeptoo Chesinya and Ruto Chesinya.

3. The application is not opposed.
4. The court can order the substitution of a deceased defendant with a legal representative as long as the application is made within one year. Order 24, Rule 4 of the *Civil Procedure Rules* provides;

“ 4

- (1) Where one of two or more defendants dies and the cause of action does not survive or continue against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the cause of action survives or continues, the court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.
- (2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.
- (3) Where within one year no application is made under sub rule (1), the suit shall abate as against the deceased defendant.”

5. In the case at hand, the 2nd defendant died on 17th June, 2020. The legal representatives of the estate of the 2nd defendant filed an application for substitution but there was no existing suit against the 2nd defendant at the time of filing of the above application and the application was struck out.
6. Order 24 Rule 7 of the *Civil Procedure Rules* requires the plaintiff or the person claiming to be the legal representative of a deceased plaintiff, to apply for an order to revive a suit which has abated or to set aside an order of dismissal; and, if it is proved that he was prevented by any sufficient cause from continuing the suit, the court shall revive the suit or set aside such dismissal upon such terms as to costs or otherwise as it thinks fit.
7. The plaintiff filed the instant application under Order 24 Rule 7 of the *Civil Procedure Rules* seeking orders for revival of the suit and extension of time to substitute the deceased 2nd defendant. She has explained why there was delay in substituting the deceased 2nd defendant (See paragraph 2 of this ruling). I am satisfied with the explanation given on what led to the delay and abatement and I do not see what prejudice will be occasioned to the defendants if the application is allowed. Consequently, I find the application dated 23rd June 2023 to be merited and I allow it with no orders as to costs as the application was not defended.
7. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY, AT ITEN THIS 18TH DAY OF OCTOBER, 2023.

L. N. WAITHAKA
JUDGE



In the presence of:

* Ms. Salim holding brief for Mr. Mwetich for the plaintiff/applicant.

* No appearance for the respondents.

